

CAUSE NO. PD-1037-16

*In the Court of Criminal Appeals of Texas*

FILED  
COURT OF CRIMINAL APPEALS  
3/13/2017  
ABEL ACOSTA, CLERK

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THE STATE OF TEXAS, APPELLANT

V.

REINALDO SANCHEZ, APPELLEE

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ON APPEAL FROM CAUSE NO. 13-15-00288-CR  
IN THE THIRTEENTH COURT OF APPEALS,  
TRIAL COURT CAUSE NO. CR- 3054-14-D  
206<sup>th</sup> JUDICIAL DISTRICT COURT OF HIDALGO COUNTY, TEXAS  
HON. Rose Guerra Reyna PRESIDING

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**BRIEF OF STATE**

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ATTORNEYS FOR THE STATE

Oral argument is not requested

## **IDENTITY OF PARTIES AND COUNSEL**

THE TRIAL COURT JUDGE in this case was the Honorable Rose Guerra Reyna, presiding judge of the 206<sup>th</sup> District Court.

APPELLANT in this case is the State of Texas, by and through her District Attorney for Hidalgo County, the Hon. Ricardo Rodriguez, Jr., Office of Criminal District Attorney, Hidalgo County Courthouse, 100 N. Closner Blvd., Edinburg, Texas 78539.

APPELLANT is represented on appeal by Hon. Michael W. Morris, Assistant District Attorney for Hidalgo County, Hidalgo County Courthouse, 100 N. Closner Blvd., Edinburg, Texas 78539.

APPELLANT was represented at trial by the Hon. Neel Kapur, Assistant District Attorney for Hidalgo County, the Hon. Joaquin Zamora, and the Hon. Victoria Muniz, Assistant District Attorney for Hidalgo County, Hidalgo County Courthouse, 100 N. Closner Blvd., Edinburg, Texas 78539.

APPELLEE in this case is Reinaldo Sanchez.

APPELLEE is represented on appeal by the Hon. Victoria Guerra, 3219 N. McColl Rd., McAllen, Texas 78501.

APPELLEE was represented at trial by the Hon. Robert Salinas and the Hon. Roel Gutierrez, 2101 Wood Ave, Donna, Texas 78537.

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TO THE HONORABLE COURT OF CRIMINAL APPEALS OF TEXAS:

Appellant, The State of Texas, respectfully requests that this Court grant its petition for discretionary review and respectfully shows:

**STATEMENT REGARDING ORAL ARGUMENT**

Oral argument would not be beneficial in the case at bar,, because the facts and legal arguments are adequately presented in the briefs and record. The State respectfully submits that oral argument in the instant case is not necessary and should therefore be denied.

The State reserves the right to present oral argument should the Court grant oral argument.

**STATEMENT OF THE CASE**

This case involved an interlocutory appeal in which the Thirteenth Court of Appeals affirmed the trial court's an order granting the Appellee's motion to suppress the evidence discovered in a search incident to arrest of his vehicle after cocaine was discovered on his person.

## **STATEMENT OF PROCEDURAL HISTORY**

Date and citation to Court of Appeals Opinion:

The Thirteenth Court of Appeals rendered its opinion and judgment on July 21, 2016. *State v. Sanchez*, 501 S.W.3d 165 (Tex. App.--Corpus Christi 2016).

## **GROUND FOR REVIEW**

- I. The Thirteenth Court of Appeals erred in its application of *Arizona v. Gant*, in that it did not apply the totality of the circumstances when determining the validity of the search incident to arrest.**

### **Statement of Facts**

Officer Mariel Martinez observed a jeep with its driver side door wide open on a grassy area east of Kohami's Bar and Grill at 5:12 a.m. on April 26, 2014. 2 RR 12-14, SCR 3. The area had recently had a series of burglary of vehicles reported. 2 RR 14; SCR 3. Officer Martinez proceeded to pull her patrol unit into the parking area. 2 RR 15. Officer Martinez approached the jeep to investigate; she observed an individual, asleep or passed out, in the driver seat. 2 RR 15-17; SCR 3. At this time officer Martinez called for a backup unit. 2 RR 16-17; SCR 3. Officer Oscar De Leon responded to the request for back up. 2 RR 17-18; 2 RR 41; SCR 3.

Once officer De Leon arrived, Officer Martinez approached the vehicle and called out to the individual passed out in the driver seat. 2 RR 18. Neither officer had their weapon drawn. 2 RR 18. Appellee was the individual passed out in the vehicle. 2 RR 19-21. Appellee was asked for his name, which he provided as Reinaldo Sanchez. 2 RR 20. Officer Martinez ran Appellee's name and date of birth through dispatch for a warrants check. 2 RR 20. Dispatch informed Officer Martinez that Appellee had several open warrants for unpaid tickets. 2 RR 20. Appellee confirmed that he was the individual with the unpaid tickets. 2 RR 21. At this time Officer Martinez handcuffed and placed Appellee under arrest for the open warrants. 2 RR 21.



Officer Martinez then conducted a search incident to arrest<sup>1</sup> of Appellee's person. 2 RR 22. Officer Martinez found a cigarette box in one of Appellee's pant pockets. 2 RR 22. In the cigarette box Officer Martinez found a two clear plastic baggies with a white powdery substance. 2 RR 22-23. In Officer Martinez's experience the white powdery substance appeared to be cocaine. 2 RR 23. While conducting the search Officer Martinez observed Appellee staring at the passenger seat of his vehicle with a fixed gaze. 2 RR 23. Officer Martinez believed that either a weapon or additional contraband could be located in the vehicle based on Appellee's behavior. 2 RR 24, 35. Officer Martinez then proceeded to the passenger side of the vehicle to observe the location that Appellee was gazing at. 2 RR 25. Officer Martinez opened the door and picked up a black t-shirt from the passenger side seat and observed a Nintendo DS pouch. 2 R 25. The pouch had been on the seat within arm's reach of Appellee when he was in the vehicle. 2 RR 27. Officer Martinez observed a clear plastic baggie with a white powdery substance in the pouch. 2 RR 25. The substance appeared to be cocaine. 2 RR 26. The substance was subsequently field tested and was determined to be positive for cocaine. 2 RR 26.

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<sup>1</sup> Appellee was handcuff but was within several feet of his vehicle at the time of the search incident to arrest. 2 RR 2 RR23, 30.

## **Summary of Argument**

The Thirteenth Court of Appeals misapplied United States Supreme Court's in *Arizona v. Gant*, in that it held that the evidence discovered in the vehicle was not discovered after a valid search incident to arrest. Officer Martinez had clear evidence of possession of a controlled substance after the lawful search incident to arrest of Appellee's person. Therefore the Officer Martinez had probable cause to arrest Appellee for possession of a controlled substance when she searched his vehicle under the exception as expressed in *Arizona v. Gant*.

## **Argument**

**I. The Thirteenth Court of Appeals erred in its application of *Arizona v. Gant*, in that it did not apply the totality of the circumstances when determining the validity of the search incident to arrest.**

*Arizona v. Gant*, authorizes a search of a "vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest." 556 U.S. 332, 351 (2009). As such, there are two times a search is authorized: (1) when the arrestee is within reaching distance of the passenger compartment at the time of the search; or (2) when it is reasonable to believe the vehicle contains evidence of the offense of arrest. *Id.* The Thirteenth Court of Appeals misapplied *Gant*, in that it held that the arrest for

traffic warrants did not authorize the further search of the vehicle even when officers had found drugs during the search incident of Appellee's person.

### **A. Argument and Authority**

The second justification, under *Gant*, has been held to authorize the search of a vehicle incident to lawful arrest, if further evidence of the offense of arrest could reasonably be located in the vehicle<sup>2</sup>. *See Daves v. State*, 327 S.W.3d 289, 293 (Tex. App.--Eastland 2010, no pet.)(holding that for an arrest for possession of narcotic paraphernalia, it would be reasonable for the officer to believe that the vehicle contained evidence related to that offense). In facts nearly identical to those in this case, this Court's sister court the Supreme Court of Kentucky, has held that when a search incident to arrest of the suspect's person leads to the discovery of narcotic paraphernalia the search of the vehicle is authorized under *Gant*. *See Owens v. Commonwealth*, 291 S.W.3d 704, 707-708 (Ky. 2009); *See also Robbins v. Commonwealth*, 336 S.W.3d 60, 63 (Ky. 2011).

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<sup>2</sup> Additionally, *Gant* itself approved of the circumstances surrounding the searches in *New York v. Belton*, 453 U.S. 454 (1981) and *Thorton v. United States*, 541 U.S. 615 (2004) as being within the second justification. *See Gant*, 556 U.S. at 343-44. In *Thorton*, the officer arrested the suspect after discovering two baggies, one of marijuana and the other of cocaine, on the suspect's person. *Thorton*, 541 U.S. at 618. In *Belton*, the officer smelled burned marijuana and observed an envelope marked "Supergold", which the officer associated with marijuana; the suspects were asked to exit the vehicle and were placed under arrest for possession of marijuana. *See Belton*, 453 U.S. at 455-456.

This interpretation flows from United State Supreme Court authority on the scope of search incident to arrest. The Supreme Court has stated that the touchstone of the Fourth Amendment is reasonableness. See *Ohio v. Robinette*, 519 U.S. 33, 39 (1996). Further, the reasonableness is to be measured in objective terms by looking to the totality of the circumstances. *Id.* at 38. Based on the totality of the circumstances it is reasonable for the arresting officer to conclude that having discovered drugs or drug paraphernalia on the suspect's person additional evidence of the possession would be found in the car. See *Hill v. State*, 303 S.W.3d 863, 876 (Tex. App.-- Fort Worth 2009, pet. ref'd); *State v. Ogeda*, 315 S.W.3d 664, 667 (Tex. App. --Dallas 2010, pet. ref'd).

Probable cause to arrest is determined by an objective standard and the arrest need not precede the search incident to arrest as long as the probable cause had been established prior to the search. See *Rawlings v. Kentucky*, 448 U.S. 98, 110-111 (U.S. 1980). The Supreme Court has stated: “[w]hile it is assuredly good police practice to inform a person of the reason for his arrest at the time he is taken into custody, we have never held that to be constitutionally required.” See *Devenpeck v. Alford*, 543 U.S. 146, 155 (U.S. 2004). Therefore a person who is arrested is lawfully arrested for any offense for which there was probable cause to support the arrest. “[T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the

officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." *Id.* at 153(citing to *Whren v. United States*, 517 U.S. 806, 814 (U.S. 1996)). To allow otherwise would invite the variable application of the fourth amendment condemned in *Devenpeck*<sup>3</sup>. *Id.* at 153.

The Thirteenth Court of Appeals application of *Gant* would determine the applicability of the search of the vehicle incident to arrest on the status of the suspect when the evidence of the crime was discovered. If the suspect was under arrest for a traffic ticket when the drugs were discovered the search would not be authorized. *See State v. Sanchez*, 501 S.W.3d 165, 170-71 (Tex. App.--Corpus Christi 2016). However, if the drugs were found based on a detention for a traffic stop followed by the discovery of the drugs by consent or terry pat down the search of the vehicle would be authorized. *Daves*, 327 S.W.3d at 293. Alternatively, the Thirteenth Court of Appeals would require the officer to inform the suspect of the reason for arrest before the officer was authorized to search the vehicle, in direct opposition to Supreme Court authority. *Sanchez*, 501 S.W.3d at 170-71; *Devenpeck*, 543 U.S. at 155. The Thirteenth Court of Appeals erred when it held that *Gant* did not authorize the search incident to arrest of the Appellee's vehicle.

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<sup>3</sup> "This means that the constitutionality of an arrest under a given set of known facts will 'vary from place to place and from time to time,' *Whren*, U.S. 806 at 815, depending on whether the arresting officer states the reason for the detention and, if so, whether he correctly identifies a general class of offense for which probable cause exists. An arrest made by a knowledgeable, veteran officer would be valid, whereas an arrest made by a rookie *in precisely the same circumstances* would not. We see no reason to ascribe to the Fourth Amendment such arbitrarily variable protection." *Devenpeck*, 543 U.S. at 153.

**B. Appellee was under arrest for the cocaine under a totality of the circumstances**

Under the dictates of *Rawlings*, Appellee was subject to arrest for possession of a controlled substance as soon as the cocaine was discovered on his person. 448 U.S. at 110-111. Officer Martinez had within her knowledge sufficient facts to justify detaining Appellee on the traffic warrants as well as an additional offense of possession of a controlled substance. The trial court held that Officer Martinez lawfully discovered the cocaine on Appellee's person. *See* SCR 3-6. The thirteenth Court of appeals agreed that the trial court implicitly found the seizure of the cocaine from Appellee's person was lawful. *See Sanchez*, 501 S.W.3d at 170. Therefore under an objective view of the facts as known by Officer Martinez there existed probable cause to arrest Appellee for possession of a controlled substance. Martinez's search of Appellee's passenger seat was authorized by the second prong of *Gant*. 556 U.S. at 351.

**C. Appellee's arrest for drug's gave reason for Officer Martinez to reasonably believe further evidence would be found in the vehicle.**

Appellee was discovered to have cocaine on his person through lawful search at the time he was in a position to stare at the passenger side seat of his vehicle. 2 RR 23-25. Appellee remained in close proximity to the vehicle during the search of his person. Officer Martinez observed Appellee's suspicious

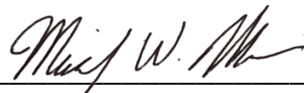
demeanor. 2 RR 24-25. And upon a quick search of the area Appellee was gazing at, Officer Martinez found a Nintendo DS pouch which contained additional cocaine. 2 RR 25-26. The presence of a controlled substance on a suspect after a traffic stop provide reasonable suspicion to search the suspect's vehicle incident to the arrest for possession of the controlled substance. *See Hill*, 303 S.W.3d at 876; *Ogeda*, 315 S.W.3d at 667.

### **CONCLUSION AND PRAYER**

The Court should reverse the judgment of the lower courts remand for a trial setting in which the evidence is not suppressed.

Respectfully submitted,

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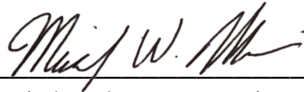
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**CERTIFICATE OF COMPLIANCE WITH RULE 9.4(e)**

This document complies with the typeface requirements of Tex. R. App. P. 9.4(e) because it has been prepared in a conventional typeface no smaller than 14-point for text and 12-point for footnotes. This document also complies with the word-count limitations of Tex. R. App. P. 9.4(i), because it contains 2,962 words, excluding the parts exempted by Rule 9.4.



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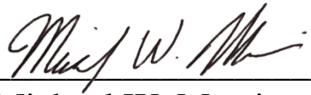


## **CERTIFICATE OF DELIVERY**

I certify that on March 8, 2017, in compliance with Texas Rule of Appellate Procedure 9.5, I served this document on the following counsel of record by electronic mail and/or by facsimile:

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